IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 2382 of 2010

Date of Decision: 17.09.2010

Mahant Parminder Dass

.... Petitioner

Versus

Gurmeet Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ALOK SINGH

Present : Mr. Vikas Bahl, Advocate
for the petitioner

Mrs. Gurnam Kaur Turka, Advocate
for the respondents

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

ALOK SINGH, J. (ORAL)

1. Present petition is filed challenging order dated 20.3.2010 passed by Civil Judge (Jr. Divn.) Rajpura whereby the application for impleadment of the legal representative of Mahant Didar Dass – defendant No. 4 was dismissed.

2. In a suit filed by the respondent No. 4/plaintiff, Mahant Didar Dass was impleaded as defendant No. 4. Didar Dass expired on 11.3.2007, however, plaintiff did not move any application for substitution of the LRs of defendant No. 4. Present petitioner Parminder Dass claiming himself to be Chela (spiritual son of Didar Dass) moved an application seeking impleadment as legal heir of defendant No. 4. The application was rejected vide impugned order.

3. Undisputedly Didar Dass – defendant No. 4 expired on

11.3.2007. Undisputedly Didar Dass was also a party before the Hon'ble Apex Court in another litigation wherein present petitioner Parminder Dass was impleaded as legal heir of Didar Dass being Chela (spiritual son of Didar Dass). Learned trial Court has rejected the application moved by the petitioner placing reliance on the judgment of Single Judge of this Court in the matter of ***Dula Gir Chela Shri Harjinder Gir vs. Harchand Gir, reported in 1993 CCC 362*** wherein learned Single Judge of this Court has held that on the death of the Mahant his personal right died with him, hence, there is no question of substitution of the LR of deceased Mahant.

4. Mr. Vikas Behl, learned counsel appearing for the petitioner herein has placed reliance on the judgment of another Single Judge of this Court in the matter of ***Angre Sahib Chela Sant Isher Dass Sadh Udasi of Moom vs. State of Punjab, reported in 1966-1968 Supple. The Punjab Law Report, page 716*** wherein learned Single Judge has held that on the death of Mahant his Chela would be legal representative as defined under Section 2(11) of the Code of Civil Procedure. Learned counsel for the petitioner further placed reliance on the judgment of the Apex Court in the matter of ***Shri Rikhu Dev, Chela Bawa Harjug Dass vs. Som Dass (deceased) through his Chela Shiam Dass, reported in (1976) 1 Surpreme Court Cases 10.*** In the matter of ***Shri Rikhu Dev (Supra)*** Supreme Court in paragraphs No. 8 and 9 has held as under:-

> *"8. This rule is based on the principle that trial of a suit cannot be brought to an end merely because the interest of a party in the subject-matter of the suit has*

devolved upon another during the pendency of the suit but that suit may be continued against the person acquiring the interest with the leave of the Court. When a suit is brought by or against a person in a representative, the rule that has to be applied is Order 22, Rule 10 and not Rule 3 or 4, whether the devolution takes place as a consequence of death or for any other reason. Order 22, Rule 10 is not confined to devolution of interest of a party by death; it also applies if the head of the mutt or manager of the temple resigns his office or is removed from office. In such a case the successor to the head of the mutt or to the manager of the temple may be substituted as a party under this rule. The word 'interest' in the property i.e., the subject-matter of the suit and the interest is the interest of the person who was the party to the suit.

9. It was, however, contended on behalf of the respondent that there was no devolution of the interest in the subject-matter of the suit on the death of Som Dass, since there was no certainty as to the person who would be elected as mahant to succeed him. The argument was that it was uncertain on the death of Som Dass as to who would become the mahant by election, that it was only when a person succeeded to the mahantship on the death of a previous mahant by virtue of law or custom that there would be devolution of interest in the subject-matter of the suit and, therefore, Order 22, Rule 10, would not be attracted. We see no force in this argument. We are of the view that devolution of the interest in the subject-matter of the suit took place when Shiam Dass was elected as mahant of the Dera after the death of Some Dass."

5. Section 2(11) of the Code of Civil Procedure reads as

under:-

> *"(11) Legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued."*

6. From the perusal of Section 2(11) it can safely be said that legal representative means a person who in law represents the estate of a deceased person and includes any person intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party shall be a legal representative.

7. Since petitioner was appointed as Mahant to represent the office of the Mahant and estate of the Dera as per the custom and practise of Bekh, hence, petitioner is a legal representative within the definition of Section 2(11) of the Code of Civil Procedure.

8. Moreover, if arguments advanced by learned counsel for the respondent that defendant No. 4 was impleaded in the personal capacity then of course petitioner being Chela is a legal representative as defined under Section 2(11) and is entitled to be substituted under Order 22 Rule 4. Further, if it is presumed that defendant No. 4 was sued in a representative capacity being the Mahant of the Dera then as per Order 22 Rule 10 petitioner would be a person in whose favour the right of Mahantship stood devolved in a custom and practise of the Bekh. In both the circumstances, the petitioner is entitled to be impleaded as party in place of defendant

No. 4 to represent the estate and office of defendant No. 4

9. Petition is, accordingly, allowed. Impugned order is quashed. Application moved by the petitioner herein is allowed.

(ALOK SINGH)
JUDGE

17.09.2010
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